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Unpublished/noncitabile July 2, 2018

2018 WL 3217199

Not Officially Published

(Cal. Rules of Court, Rules 8.1105 and 8.1110, 8.1115)

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Court of Appeal, Second District, Division 1, California.

Gail V. ANDERSON, Jr., Plaintiff and Appellant,

v.

COUNTY OF LOS ANGELES,

Defendant and Appellant.

B279304

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Filed 07/02/2018

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As Modified on Denial of Rehearing 8/1/2018

APPEAL from a judgment of the Superior Court of Los Angeles County, [Mark V. Mooney](#), Judge. Affirmed. (Los Angeles County Super. Ct. No. BC596069)

#### Attorneys and Law Firms

Carroll, Kelly, Trotter, Franzen, McKenna & Peabody and [David P. Pruett](#) for Plaintiff and Appellant Gail V. Anderson, Jr.

Hausman & Sosa, [Jeffrey M. Hausman](#), and [Larry D. Stratton](#) for Defendant and Appellant County of Los Angeles.

#### Opinion

[ROTHSCHILD](#), P. J.

\*1 Plaintiff Gail V. Anderson, Jr., sued defendant County of Los Angeles (the County), alleging several causes of action arising from the County's termination of Anderson as chief medical officer of the Harbor-UCLA Medical Center. The parties eventually settled their claims, and the County agreed to pay Anderson \$1,850,000, a large portion of which consisted of back wages for the time following Anderson's termination. When the County paid Anderson pursuant to the settlement agreement, it deducted \$173,325.04 from the payment to Anderson to account for the County's required contribution toward Anderson's retirement. Anderson filed a new suit contending that this deduction was improper. Both

sides filed motions for summary judgment, and Anderson appealed from the trial court's ruling in favor of the County. The County filed a cross-appeal seeking attorney fees on the ground that Anderson's suit was filed in bad faith or without reasonable cause. We affirm.

#### FACTS AND PROCEEDINGS BELOW

In 2011, the County placed Anderson on paid administrative leave, and approximately one year later, the County terminated his employment. Anderson filed an administrative petition with the Los Angeles County Civil Service Commission appealing his discharge, and he also filed suit alleging that the County had committed multiple torts in the course of terminating his employment. In 2014, the parties settled the case, and the County agreed to reinstate Anderson to his former position and pay him \$1,850,000. In exchange, Anderson agreed to drop all his claims against the County and to submit a letter of resignation.

Because Anderson's claims in this appeal turn almost entirely on the terms of the settlement agreement, we quote from that agreement extensively. The agreement provides that Anderson "shall receive from the C[ounty] the total amount of ... \$1,850,000.00 ... as the total and complete amount of settlement funds to be comprised of back pay, legal fees and costs, and general damages in the amounts set forth below. This amount shall be referred to collectively as the 'S[ettlement] F[unds].' In no event shall the C[ounty] pay A[nderson] and his attorneys anything more than the S[ettlement] F[unds] no matter how those funds are comprised. A[nderson] will receive no other benefits, no other financial consideration from [the] C[ounty] or other consideration as a result of entering into and/or executing this [agreement]. A[nderson] will not receive any other back pay or any other funds of any sort from the C[ounty] except as specifically set forth in this [agreement]."

The settlement agreement goes on to address the portion of the award attributable to back pay. It states that Anderson "agrees that from the S[ettlement] F[unds], the C[ounty] will separately pay his back wages, including regular benefits, to which he would have been entitled ... between the date of July 10, 2012 and the date of May 31, 2014. This amount shall be referred to collectively as the 'G[ross] B[ack] P[ay].' The G[ross] B[ack] P[ay] shall be calculated by [the] C[ounty]. The G[ross] B[ack] P[ay] shall ... also be deducted from the S[ettlement] F[unds] and paid by separate payroll warrant to

A[nderson], less all applicable payroll deductions and legally required withholdings. To the extent permissible, A[nderson] shall also receive ... all regular benefits and retirement service credits with the Los Angeles County Employees Retirement Association ('LACERA') to which he would have been entitled ... between the date of July 10, 2012 and the date of May 31, 2014."

\*2 Later, the agreement clarifies the scope of the payments to Anderson. It states that Anderson "will receive no back pay, no benefits, no financial or other consideration as a result of entering into and/or executing this [agreement] other than that expressly described as the S[ettlement] F[unds] in this [agreement]. [¶] The G[ross] B[ack] P[ay] under this [agreement] shall include all of A[nderson]'s regular benefits (but no other actual or potential cash or benefits such as overtime or bonuses or the like)."

The County later sent Anderson a letter accounting for the payments it made pursuant to the settlement agreement. The County explained that it paid \$740,000 to Anderson's attorneys. In addition, it paid \$775,998.93 in back wages. The County directly paid \$471,631.82 from this amount to Anderson after deducting \$304,367.11 for "taxes, employee LACERA contributions and other deductions." In addition, the County made payments of \$60,391.92, \$30,124.20, and \$20,273.04 to "MegaFlex," and an "Employer LACERA Contribution" of \$173,325.04. The County stated that it also paid \$49,886.87 to Anderson in "Damages," for a grand total of \$1,850,000 in total payments pursuant to the settlement agreement.

Anderson filed a new suit contending that it was improper for the County to deduct the \$173,325.04 "Employer LACERA Contribution" from the \$1,850,000 payment pursuant to the settlement agreement. He alleged that the County was required both under the terms of the contract and under state law to pay its contribution to Anderson's LACERA account separately from the \$1,850,000 payment to Anderson. Both Anderson and the County filed motions for summary judgment, and the trial court granted the County's motion.

## DISCUSSION

Anderson contends the trial court erred in granting summary judgment in favor of the County. We disagree.

He first contends that the terms of the settlement agreement did not allow the County to include the employer LACERA contribution as part of the \$1,850,000 payment owed by the County. Next, he argues that regardless of the terms of the settlement agreement, governing law, including the County Employees Retirement Law of 1937 (CERL) ([Gov. Code, § 31450 et. seq.](#)), does not allow the County to delegate payment of the employer portion of retirement benefits to an employee.

Summary judgment is proper when there are no triable issues of material fact and the moving party is entitled to judgment as a matter of law. ([Nealy v. City of Santa Monica \(2015\) 234 Cal.App.4th 359, 370](#); [Aguilar v. Atlantic Richfield Co. \(2001\) 25 Cal.4th 826, 843 \(Aguilar\)](#); [Code Civ. Proc., § 437c, subd. \(c\)](#).) A defendant moving for summary judgment bears an initial burden of showing that one or more elements of the plaintiff's cause of action cannot be established or that there is a complete defense to that cause of action. ([Nealy v. City of Santa Monica, supra, 234 Cal.App.4th at p. 370](#); [Aguilar, supra, 25 Cal.4th at p. 849](#).) If the defendant meets this burden, the plaintiff has the burden to demonstrate one or more triable issues of material fact as to the cause of action or defense. ([Aguilar, supra, 25 Cal.4th at p. 849](#).) A triable issue of material fact exists "if, and only if, the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof." ([Id. at p. 850](#).)

In reviewing summary judgment, "[w]e review the trial court's decision de novo, liberally construing the evidence in support of the party opposing summary judgment and resolving doubts concerning the evidence in favor of that party." ([State of California v. Allstate Ins. Co. \(2009\) 45 Cal.4th 1008, 1017-1018](#).)

### I. Terms of the Settlement Agreement

\*3 Anderson contends that the settlement agreement unambiguously bars the County from deducting the employer portion of the retirement benefits from the amount owed to him under the agreement. We disagree. The agreement explicitly limits the County's total expenditure to \$1,850,000. Consequently, the County did not breach the agreement by deducting the employer's portion of the retirement payments from the amount owed to Anderson.

The County's position, which the trial court accepted, relies principally on language in the contract limiting the County's obligation to no more than \$1,850,000. Thus, the agreement states that Anderson "shall receive from the C[ounty] the total amount of ... \$1,850,000.00 ... as the total and complete amount of settlement funds." Anderson contends that this amount does not include the employer contribution to his retirement account because those payments go directly to LACERA—he does not receive those funds from the County. This interpretation is not consistent with other language in the agreement, however. The agreement clarifies that "A[nderson] will receive no other benefits, no other financial consideration from C[ounty] or other consideration as a result of entering into and/or executing this [agreement]." Even if Anderson does not personally receive the employer's contribution to LACERA, he receives a financial benefit from the payment because it funds increased retirement benefits to him.<sup>1</sup> Other language later in the contract makes this point even clearer: "[T]he total amount of all payments, paid pursuant to this [agreement] shall not exceed the S[ettlement] F[unds] of ... \$1,850,000." Another provision states that Anderson "will receive no back pay, no benefits, no financial or other consideration as a result of entering into and/or executing this [agreement] other than that expressly described as the S[ettlement] F[unds] in this [agreement]."

The contract also clarifies that the \$1,850,000 payment includes Anderson's benefits: "[F]rom the [\$1,850,000 in] S[ettlement] F[unds], the C[ounty] will separately pay his back wages, *including regular benefits*, to which he would have been entitled ... between the date of July 10, 2012 and the date of May 31, 2014." (Italics added.) We fail to understand how Anderson's retirement benefits are not part of his regular benefits. Indeed, almost immediately afterward, the agreement stated that, "[t]o the extent permissible, A[nderson] shall also receive [ ] all regular benefits and retirement service credits with [LACERA] to which he would have been entitled ... between the date of July 10, 2012 and the date of May 31, 2014." When all of this language is considered together, it is clear that the parties intended that the County pay no more than \$1,850,000 under the settlement, and that this amount included all of Anderson's benefits.

Anderson tries to escape this conclusion by pointing to two provisions that he believes support his position. First, the agreement requires the County to deduct his back wages "from the S[ettlement] F[unds] and [pay it] by separate payroll warrant to A[nderson], less all applicable

payroll deductions and legally required withholdings." The employer's contribution to a LACERA account is not typically reflected in payroll deductions and withholdings, and Anderson thus argues that the employer's contribution cannot be included within this part of the settlement payment. When considered alone, this statement might create ambiguity as to the County's obligations. But it is a basic principle of contract interpretation that " " "language in a contract must be construed in the context of that instrument as a whole, and in the circumstances of that case, and cannot be found to be ambiguous in the abstract." ' ' ' ( [State Farm General Ins. Co. v. JT's Frames, Inc. \(2010\) 181 Cal.App.4th 429, 445](#), quoting [Bank of the West v. Superior Court \(1992\) 2 Cal.4th 1254, 1265](#).) In this case, the context is a document that in numerous places limits the County's exposure to no more than \$1,850,000. Thus, we must interpret the section in question as instructing the parties to treat the payment of Anderson's back wages as an ordinary paycheck, subject to the same withholdings and taxes as any other paycheck. It would be reasonable to infer from this that the County was required to pay the employer's share of Anderson's LACERA benefits, but not that the County's total obligations could thereby increase above \$1,850,000.

\*4 Next, Anderson cites a provision stating that "except for the employer's share of all payroll tax obligations including the regular retirement contributions, if any, A[nderson] shall be responsible for all [s]tate, [l]ocal and [f]ederal tax liabilities as a result of this" agreement. He argues that this means the County was responsible for paying the employer's share of LACERA benefits in the same way and to the same extent that the County was required to pay his payroll taxes. Anderson notes that the County did not deduct its share of federal Medicare payroll taxes from the \$1,850,000 total, and contends that the County should not have deducted the employer's share of LACERA payments either. This provision simply divides responsibility for payment of tax obligations and has nothing to do with how the County's pension contribution will be allocated.

When we consider the settlement agreement as a single document, rather than as multiple individual pieces, there is only one reasonable interpretation: the County's duty to pay the employer's share of Anderson's back wages was included in its obligation to pay \$1,850,000 under the contract.

## II. Delegation of Employer Obligation to Pay Retirement Benefits

Anderson contends that, even if the terms of the settlement agreement were otherwise, the County could not have included the employer's share of his LACERA contributions as part of the \$1,850,000 settlement amount because an employer may not delegate the obligation to pay its share of an employee's retirement benefits to the employee. We disagree.

In his opening brief on appeal, Anderson spends a great deal of time describing the manner in which county government pensions are funded under CERL. To wit, Anderson notes that retirement benefits “are funded by employer contributions, employee contributions, and investment earnings on monies deposited in the fund.” (*O'Neal v. Stanislaus County Employees' Retirement Assn.* (2017) 8 Cal.App.5th 1184, 1199, quoting 79 Ops.Cal.Atty.Gen. 95, 96 (1996).) The board administering LACERA must recommend a rate of contribution by employees and by the County, and the County must appropriate the funds to pay its share of the contributions to LACERA. (See *O'Neal v. Stanislaus County Employees' Retirement Assn.*, *supra*, 8 Cal.App.5th at p. 1200.) Anderson notes further that there is no provision in state law allowing county governments to require employees to bear the burden of employer contributions to retirement funds.

If Anderson had sued the County because the County deducted the employer's share of his retirement benefits from his paychecks, this law might be dispositive. But this is not such a case. Instead, this case presents the question of whether the County's payment of its share of an employee's retirement benefits may count toward the maximum payment to the employee under the terms of a settlement agreement. We see no reason why it may not, and we find the discussion of the way in which counties ordinarily fund their pension obligations irrelevant.

### III. Cross-Appeal for Attorney Fees

In its cross-appeal, the County contends that the trial court erred by denying its motion for attorney fees pursuant to [Code of Civil Procedure section 1038](#). Under that section, public entities that win lawsuits at summary judgment may petition the trial court for an award of defense costs, including attorney fees. (See *ibid.*) In order for a public entity to be eligible for an award, the trial court must determine that the

losing party did not bring its suit “in good faith and with reasonable cause.” ([Code Civ. Proc., § 1038, subd. \(a\)](#).) We agree with the trial court that the County is not entitled to relief under this provision.

Reasonable cause is an objective standard, under which a court must “decide ‘whether any reasonable attorney would have thought [an unsuccessful] claim tenable.’” ([Knight v. City of Capitola](#) (1992) 4 Cal.App.4th 918, 932, disapproved of on another ground by [Reid v. Google, Inc.](#) (2010) 50 Cal.4th 512, 532, fn. 7.) Good faith is a subjective test that requires a court to determine—usually via indirect proof—whether the plaintiff believed a cause of action was valid. ([Knight v. City of Capitola](#), *supra*, 4 Cal.App.4th at p. 932.)

\*5 Although we agree with the County and the trial court that Anderson's proposed interpretation of the settlement agreement was incorrect, it was not so outlandish as to lack reasonable cause or to raise questions about Anderson's good faith. The settlement agreement and the law regarding employer contributions to retirement accounts are complex enough that a reasonable attorney could have believed Anderson's claims were tenable.

### DISPOSITION

The judgment of the trial court is affirmed. The parties are to bear their own costs on appeal.

We concur.

[CHANNEY](#), J.


[JOHNSON](#), J.

### All Citations

Not Reported in Cal.Rptr., 2018 WL 3217199, 2018 Employee Benefits Cas. 235,037

### Footnotes

<sup>1</sup> Anderson contends that the County's payment of its share of Anderson's LACERA payment did not constitute a benefit to him. He cites [Ventura County Deputy Sheriffs' Assn. v. Board of Retirement](#) (1997) 16 Cal.4th 483, superseded by

statute on another ground, as stated in  [Marin Assn. of Public Employees v. Marin County Employees' Retirement Assn. \(2016\) 2 Cal.App.5th 674, 705, fn. 22](#), in which our Supreme Court held that an employer's contribution to the employee's county retirement fund is not compensation for purposes of the calculation of an employee's retirement benefits under CERL. (*Ventura County Deputy Sheriffs' Assn. v. Board of Retirement, supra*, at pp. 494-495.) But a payment may benefit Anderson even if it is not compensation under CERL. In this case, Anderson received increased retirement benefits as a consequence of his rehiring, and the County's share of the LACERA contribution funded those increased benefits. Even if the County's share of the LACERA contribution did not benefit Anderson, it would not change the outcome of the case. Paragraph 4 of the agreement limits the County's payments pursuant to the agreement to \$1,850,000, with no qualification that only funds paid to Anderson or for his benefit counted toward the maximum amount.

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